

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Hebert	Team: Squad #2	CCRB Case #: 201806187	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 07/12/2018 11:30 AM	Location of Incident: § 87(2)(b)	Precinct: 46	18 Mo. SOL 1/12/2020	EO SOL 1/12/2020	
Date/Time CV Reported Mon, 07/30/2018 3:32 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 07/30/2018 3:32 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Nicholas Kourounis	28949	954029	046 PCT
3. POM Konti Markvukaj	07228	956883	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Kristi Skehill	12014	953413	046 PCT
2. POM Valdrin Nikqi	07009	954177	046 PCT
3. SGT Elvin Pichardo	00515	937288	046 PCT
4. POF Theresa Lustica	01534	956859	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Konti Markvukaj	Abuse: Police Officer Konti Markvukaj stopped § 87(2)(b)	§ 87(2)(b)
B. Officers	Abuse: Officers stopped § 87(2)(b)	§ 87(2)(b)
C.POM Konti Markvukaj	Abuse: Police Officer Konti Markvukaj performed a cavity search of § 87(2)(b)	§ 87(2)(b)
D.POM Konti Markvukaj	Discourtesy: Police Officer Konti Markvukaj spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E.POM Nicholas Kourounis	Discourtesy: Police Officer Nicholas Kourounis spoke discourteously to § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

## Case Summary

On August 16, 2018, § 87(2)(b) filed this complaint CCRB via the Call Processing System.

On July 12, 2018, at approximately 11:30 a.m., § 87(2)(b) was standing on the sidewalk in front of § 87(2)(b) in the Bronx with his friends, § 87(2)(b) and § 87(2)(b) (last name unknown). Sergeant Elvin Pichardo of the 46<sup>th</sup> Precinct was in a vehicle and assigned to an observation post in a Street Narcotics Enforcement Unit (SNEU) operation. Police Officer Pichardo made observations of § 87(2)(b) and told the officers in the two vehicles behind him, which were also a part of the SNEU operation, that § 87(2)(b) appeared to be smoking a marijuana cigarette. Police Officer Kristi Skehill, Police Officer Nicholas Kourounis, Police Officer Konti Markvukaj, and Police Officer Theresa Lustica, all from the 46<sup>th</sup> Precinct, exited their vehicles and Police Officer Markvukaj stopped § 87(2)(b) (**Allegation A – Abuse of Authority – Stop, § 87(2)(g)**).

The officers allegedly also stopped § 87(2)(b) (**Allegation B – Abuse of Authority – Stop, § 87(2)(g)**). Police Officer Markvukaj observed § 87(2)(b) place what he believed to be a marijuana cigarette in his mouth. Police Officer Markvukaj approached § 87(2)(b) and used one hand to grab § 87(2)(b)'s face in the lower jaw and cheek area, causing § 87(2)(b)'s mouth to open (**Allegation C – Abuse of Authority – Body Cavity Searches, § 87(2)(g)**).

Police Officer Markvukaj allegedly said to § 87(2)(b) “Get the fuck out of here” (**Allegation D – Discourtesy – Word, § 87(2)(g)**). Police Officer Kourounis also allegedly said to § 87(2)(b) “Get the fuck out of here” (**Allegation E – Discourtesy – Word, § 87(2)(g)**).

§ 87(4-b), § 87(2)(g)

Surveillance video footage of this incident was provided to the CCRB by the superintendent of the residential building at § 87(2)(b) in the Bronx (Board Review 01). § 87(2)(b) also provided the CCRB with cell phone video that he recorded of the same surveillance footage as it played on a monitor. The video footage is attached to IA # 8 and summarized in IAs # 46 and 47 (Board Reviews 17 and 18). Relevant portions of video footage are embedded in the relevant sections below.

## Findings and Recommendations

### Allegation (A) Abuse of Authority: Police Officer Konti Markvukaj stopped § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on August 16, 2018. § 87(2)(b) provided a telephone statement on October 2, 2018 (Board Review 05), but failed to appear for multiple interview appointments. § 87(2)(b) a witness, provided a telephone statement on August 24, 2018 (Board Review 19). § 87(2)(b) a witness, provided a telephone statement on September 25, 2018 (Board Review 24). Police Officer Skehill was interviewed at the CCRB on October 9, 2018. Police Officer Kourounis and Police Officer Markvukaj were interviewed at the

CCRB on October 16, 2018. Sergeant Pichardo was interviewed at the CCRB on October 23, 2018.

§ 87(2)(b) stated that, while standing in front of § 87(2)(b) and smoking a “Black and Mild” cigar of tobacco, not marijuana, he observed a black Ford 4-door sedan which he believed to be a police vehicle pass by on Morris Avenue. Shortly after the vehicle passed by, § 87(2)(b) finished smoking and put his cigarette butt on the ground nearby. About five to ten minutes later, the black Ford approached again, and following behind it was a silver Honda or Ford Fusion which § 87(2)(b) recognized and believed to also be a police vehicle. The two vehicles stopped on Morris Avenue. Inside the vehicles, § 87(2)(b) saw five uniformed officers, who looked at § 87(2)(b) and his friends for thirty seconds before exiting their vehicles and walking to the sidewalk. Police Officer Markvukaj approached § 87(2)(b).

Sergeant Pichardo stated that he observed § 87(2)(b) holding in his hand what Sergeant Pichardo believed to be a marijuana cigarette or a “blunt.” § 87(2)(b) brought the cigarette to his mouth and it appeared that § 87(2)(b) was smoking it because smoke was coming out of § 87(2)(b)'s mouth as he “puffed” the object. Sergeant Pichardo believed the object, which was brown and shaped “like a cigarette,” was a marijuana cigarette based on his training and experience. Sergeant Pichardo observed § 87(2)(b) smoking for approximately one minute. Sergeant Pichardo made this observation from approximately 15 to 20 feet away, with § 87(2)(b) on his right and approximately two car-lengths behind him, in the daylight with parked vehicles in between them, through the rolled-up window of his stationary vehicle. Sergeant Pichardo then used his radio to communicate that an individual was smoking a marijuana cigarette and provided the address of the building in front of which § 87(2)(b) was standing. In his radio transmission, Sergeant Pichardo described § 87(2)(b) by describing what § 87(2)(b) was wearing and “probably” referring to § 87(2)(b) as a black male. Sergeant Pichardo saw one of the “apprehension vehicles” approaching and said, via radio, “Keep going. Keep going. Keep going,” until the vehicle stopped in front of the correct building, at which point Sgt. Pichardo said, “The guy to your right,” in reference to § 87(2)(b).

Police Officer Markvukaj stated that while inside his vehicle, he received a radio communication from the observation post officers describing a “heavyset” black male wearing a white shirt who was “possibly” smoking marijuana at a specific address on Morris Avenue. No other information was provided in the radio transmission. While inside his vehicle, Police Officer Markvukaj began looking at the sidewalk and saw, approximately five to seven feet away, § 87(2)(b) who he believed fit the description provided in the radio transmission. Police Officer Markvukaj observed that § 87(2)(b) held between his fingers a “little” object, which appeared to be “possibly” either a cigarette or a marijuana cigarette, and § 87(2)(b) brought the object toward his mouth. Police Officer Markvukaj saw § 87(2)(b) look at the police vehicle and then place the alleged marijuana cigarette in his mouth. Police Officer Markvukaj believed the object to be a marijuana cigarette because the description over the radio had described it as “possibly” being such. Police Officer Markvukaj was the first officer to approach the sidewalk. Police Officer Markvukaj’s only intention when approaching § 87(2)(b) was to arrest him if he was smoking a marijuana cigarette. Upon reaching § 87(2)(b) Police Officer Markvukaj made physical contact with § 87(2)(b)'s arm and face.

Police Officer Kourounis stated that while in his vehicle two blocks away from § 87(2)(b) he received a radio transmission from the observation officers stating that a “heavyset” black male wearing a white T-shirt was standing at § 87(2)(b) and smoking a “possible” marijuana cigarette. The radio transmission told the “field team” officers to apprehend this male.

Surveillance video footage of this incident, an excerpt of which is embedded below (Board Review 12), shows § 87(2)(b) holding an object in his right hand, bringing it to his mouth, and blowing smoke from his mouth approximately 30 seconds before officers approach him. As the officers’ vehicles arrive and they begin to exit, § 87(2)(b) quickly puts his right hand to his mouth and then back down. Police Officer Markvukaj is the first officer to step onto the sidewalk. Police Officer Markvukaj makes physical contact with § 87(2)(b) and is the only officer who does so.



201806187\_20181114\_1646\_DM.mp4

New York Penal Law 215.40 (Board Review 25) states that a person is guilty of tampering with physical evidence when, believing that the physical evidence is about to be produced or used in an official proceeding or a prospective official proceeding, and intending to prevent such production or use, he or she suppresses it by any act of concealment, alteration, or destruction. In People v. Green, 54 A.D.3d 603 (2008) (Board Review 26), the court held that the defendant had committed the crime of tampering with physical evidence after he put an unknown object in his mouth when he believed he was about to be arrested. The object was inferred to be contraband or evidence that the defendant was attempting to prevent the police from discovering.

§ 87(2)(g)  
[REDACTED]

**Allegation (B) Abuse of Authority: Officers stopped § 87(2)(b)**

§ 87(2)(b) stated that officers approached him and made physical contact with him. § 87(2)(b) did not appear for either his two scheduled interview appointments with the CCRB, and he did not contact the CCRB to cancel or reschedule either appointment. § 87(2)(b) made no allegation regarding officers stopping § 87(2)(b) and the video footage does not appear to show any such occurrence. § 87(2)(g)  
[REDACTED]

**Allegation (C) Abuse of Authority: Police Officer Konti Markvukaj performed a cavity search of § 87(2)(b)**

It is undisputed by § 87(2)(b) and Police Officer Markvukaj himself that Police Officer Markvukaj placed his hand on § 87(2)(b)'s face, causing § 87(2)(b)'s mouth to open, in order to determine what was in his mouth.

§ 87(2)(b) stated that, as Police Officer Markvukaj approached, he asked § 87(2)(b) if he was smoking marijuana, to which § 87(2)(b) responded that he was not. Police Officer Markvukaj grabbed § 87(2)(b)'s face with one hand, with his hand was in a “V” shape such that his thumb was on one side of his jaw and his other four fingers were on the other side of his jaw. Police Officer Markvukaj squeezed § 87(2)(b)'s face, causing his lips to come together. While taking this action, Police Officer Markvukaj said, “Are you smoking weed? Were you smoking weed? Where is the weed?” § 87(2)(b) responded that he was not smoking weed. Police Officer Markvukaj held onto § 87(2)(b)'s face for approximately one minute before letting go.

Police Officer Markvukaj stated that, after observing § 87(2)(b) place the object into his mouth, he grabbed § 87(2)(b)'s arm and told him to open his mouth. Police Officer Markvukaj placed his fingers on § 87(2)(b)'s chin area. Police Officer Markvukaj did not apply any pressure to force § 87(2)(b) to open his mouth. With his hand still on his face, Police Officer Markvukaj again asked § 87(2)(b) to open his mouth. Police Officer Markvukaj's hand made contact with § 87(2)(b)'s face for approximately one to two seconds. § 87(2)(b) opened his mouth and pushed Police Officer Markvukaj's hand away from his face. § 87(2)(b) said, “Look, there's nothing in my mouth.” Police Officer Markvukaj's intent, in placing his hand on § 87(2)(b)'s face, was to determine if the substance in his mouth was marijuana and to ensure § 87(2)(b)'s safety because he did not want him to choke on what was in his mouth. Police Officer Markvukaj intended placing his hand on § 87(2)(b)'s face to serve as a “gesture” to indicate he was requesting that he open his mouth. Police Officer Markvukaj had no other purpose in placing his hand on § 87(2)(b)'s face.

The video clip embedded above in the discussion of Allegation A pertains to this allegation as well. The video clip shows Police Officer Markvukaj, after approaching § 87(2)(b) using his right hand to make physical contact with § 87(2)(b)'s face in the chin area for approximately two to three seconds.

NYPD Patrol Guide Procedure 221-01 states that Members of Service shall not use force to prevent a subject from swallowing an alleged controlled substance or other substance, once a subject has placed suspected controlled substance in his or her mouth, or to forcibly attempt to remove substance from subject's mouth or other body cavity (Board Review 06). Furthermore, NYPD Patrol Guide Procedure 221-05 states that under no conditions should a Member of Service conduct a body cavity search (Board Review 14).

Since NYPD Patrol Guide Procedure 221-01 uses the phrase “mouth or other body cavity,” it stands to reason that the NYPD Patrol Guide defines the mouth as a body cavity. Therefore, NYPD Patrol Guide Procedure 221-05, which prohibits searching all body cavities, prohibits

officers from searching an individual's mouth.

§ 87(2)(g)

**Allegation (D) Discourtesy: Police Officer Konti Markvukaj spoke discourteously to**

§ 87(2)(b)

§ 87(2)(b) stated that, after Police Officer Markvukaj made contact with his face, § 87(2)(b) moved backward and turned toward the wall of the residential building at § 87(2)(b) at which point Police Officer Markvukaj said, "Get the fuck out of here."

Police Officer Markvukaj denied telling § 87(2)(b) to leave the area, saying, "Get the fuck out of here," or using any profanity during the incident.

Police Officer Kourounis stated that Police Officer Markvukaj did not make any statements during the incident. Police Officer Kourounis did not hear any officer use profanity during the incident. Police Officer Kourounis never heard an officer say, "Get the fuck out of here," and, to his knowledge, no officer ever said this during the incident.

Police Officer Skehill did not recall this incident.

Sergeant Pichardo was not present for the portion of the incident in which this verbal discourtesy is alleged to have occurred.

§ 87(2)(g)

**Allegation (E) Discourtesy: Police Officer Nicholas Kourounis spoke discourteously to**

§ 87(2)(b)

§ 87(2)(b) stated that as he moved backward and turned toward the wall, Police Officer Kourounis also said, "Get the fuck out of here." § 87(2)(b) then began walking northward on the sidewalk until he was halfway down the block.

Police Officer Kourounis stated that he exited his vehicle after receiving the radio transmission from the observation officers. Police Officer Kourounis did not, at any point, observe a heavyset black male in a white T-shirt. As he approached the sidewalk, Police Officer Kourounis received a radio transmission from the observation officers telling him to resume patrol. Without even stepping onto the sidewalk, after being out of his vehicle for a matter of seconds, Police Officer Kourounis made a 360-degree turn and walked back to his vehicle. Police Officer Kourounis did

not return to his vehicle for any reason other than the fact that he received this radio transmission, and he did not observe anything that made him believe the situation was over. Police Officer Kourounis did not make any statements during the incident, including, “Get out of here,” or “Get the fuck out of here,” or any statement including profanity.

Police Officer Markvukaj denied hearing any officer say, “Get the fuck out of here,” or hearing any officer use profanity during the incident.

The video clip embedded above in the discussion of Allegation A shows Police Officer Kourounis stepping onto the sidewalk and gesturing at one of § 87(2)(b)'s friends. Police Officer Kourounis then walks close to § 87(2)(b) and his friends as they walk away and subsequently gestures and appears to speak to an unidentified male who is lying on the hood of a vehicle.

NYPD Patrol Guide Procedure 203-10 states that Members of Service are prohibited from using discourteous or disrespectful remarks when in contact with members of the public (Board Review 13).

§ 87(2)(g)  
[REDACTED]

§ 87(4-b), § 87(2)(g)  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(4-b), § 87(2)(g)  
[REDACTED]

[REDACTED]

§ 87(4-b), § 87(2)(g)

### Civilian and Officer CCRB Histories

- § 87(2)(b)  
[REDACTED]
  - [REDACTED]
  - [REDACTED]
- Police Officer Markvukaj has been a member of service for 4 years, and has been a subject in 15 allegations in three prior CCRB complaints, with three allegations substantiated in one case.
  - In CCRB Case # 201603962, Police Officer Markvukaj was the subject of substantiated allegations of a stop, questioning, and a strip-search, § 87(4-b)  
§ 87(2)(g)  
[REDACTED] The Board recommended a Command Discipline (A). The NYPD's disposition was a Command Discipline (A). § 87(2)(g)  
[REDACTED]
- Police Officer Kourounis has been a member of service for five years, and has been a subject in eleven allegations in six prior CCRB complaints, none of which have been substantiated.
  - § 87(4-b), § 87(2)(g)  
[REDACTED]
  - § 87(2)(g)  
[REDACTED]

### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As per the Comptroller's Office of the City of New York, as of November 21, 2018, no Notices of Claim had been filed in regard to this incident (Board Review 09).
- § 87(2)(b)  
[REDACTED]



- According to the Office of Court Administration, § 87(2)(b) has no criminal history (Board Review 11).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date